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General Assembly

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Ad Hoc Committee on the Administration of Justice at the United Nations
Second session
20-24 April 2009

Draft report

Rapporteur: Mr. Gonzalo **Bonifaz** (Peru)

I. Introduction

1. The second session of the Ad Hoc Committee on the Administration of Justice at the United Nations was convened in accordance with General Assembly decision 63/531. The Committee met from 20 to 24 April 2009 at United Nations Headquarters in New York.

2. In accordance with General Assembly decision 62/519, the Committee is open to all States Members of the United Nations, members of the specialized agencies or members of the International Atomic Energy Agency.

3. At its 4th meeting, on 20 April 2009, the Committee elected Ms. Namira Negm (Egypt) as Vice-Chairperson to replace Mr. Lebohang Fine Maema (Lesotho), who was no longer available to serve in that capacity. At the same meeting, the Committee also elected Mr. Gonzalo Bonifaz (Peru) as Rapporteur, to replace Ms. Yella Zanelli (Peru) who was no longer available to serve in that capacity. The Bureau was thus constituted as follows:

Chairperson:
Ganeson Sivagurunathan (Malaysia)

Vice-Chairpersons:
Thomas Fitschen (Germany)
Namira Negm (Egypt)
Andris Stastoli (Albania)

Rapporteur:
Gonzalo Bonifaz (Peru)

4. The Director of the Codification Division of the Office of Legal Affairs, Mr. Václav Mikulka, acted as Secretary of the Committee. Mr. Santiago Villalpando, Legal Officer in the Codification Division, acted as Deputy Secretary of the

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Committee and as Secretary of the Working Group of the Whole. The Codification Division provided the substantive services for the Committee.

5. Also at its 4th meeting, the Committee adopted the following agenda (A/AC.275/L.2):

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.
5. Continued work on the outstanding legal aspects of the item "Administration of justice at the United Nations", taking into account the results of the deliberations of the Fifth and Sixth Committees on the item, previous decisions of the General Assembly and any further decisions that the Assembly may take during its sixty-third session prior to the meeting of the Ad Hoc Committee.
6. Adoption of the report.

6. The Committee had before it:

(a) General Assembly decision 63/531, contained in document A/63/451;

(b) General Assembly resolution 63/253.

II. Proceedings

7. The Committee held two plenary meetings, on 20 and 24 April 2009.

8. In the absence of the Chairman, the meetings of the Committee were chaired by Mr. Thomas Fitschen (Germany), Vice-Chairperson of the Ad Hoc Committee.

9. At its 4th meeting, on 20 April, the Committee adopted its programme of work and decided to proceed with its discussions as a working group of the whole. The Committee also held a general exchange of views, during which delegations made statements. A summary of the debate is contained in section III below.

10. The Working Group of the Whole, which was chaired by Mr. Thomas Fitschen, held five meetings, on 20, 21, 22 and 24 April, including a question-and-answer session, on 21 April, at which the United Nations Ombudsman, the Executive Director of the Office of Administration of Justice and representatives of the Office of Legal Affairs and the Office of Human Resources Management answered questions raised by delegations.

11. In addressing the outstanding legal aspects of the item, the Working Group focused its work on the question of the scope of the new system of administration of justice. Other legal issues were also considered, including the questions of legal assistance to staff and whether staff associations may file applications before the United Nations Dispute Tribunal. An informal summary of the discussions in the Working Group is annexed to the present report (see A/AC.275/L.2). The summary was prepared by the Chairman of the Working Group for reference purposes only and not as a record of the discussions.

12. At its 5th meeting, on 24 April, the Ad Hoc Committee adopted the recommendation contained in section IV of the present report.

13. At the same meeting, the Committee adopted the report on its second session.

III. General comments made in plenary meeting

A. General aspects

14. Delegations reiterated their support for the reform of the system of administration of justice at the United Nations. They noted that the establishment of the new system was aimed at ensuring impartiality, fairness, transparency and efficiency, in line with the internationally recognized standards of due process and the rule of law.

15. Delegations welcomed the adoption by the General Assembly of resolution 63/253, and hence the adoption of the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. The appointment of all the judges of the Tribunals was also welcomed. Some delegations pointed out that the Internal Justice Council should operate in a transparent way and that it should maintain contacts with Member States. Delegations stated that they were looking forward to the Tribunals becoming operational on 1 July 2009. It was also noted that the rules of procedure of the two Tribunals should be made available to delegations in a timely manner in order to allow for their approval by the General Assembly at its sixty-fourth session.

16. It was emphasized that the new system of administration of justice should not only be adequately resourced, but should also be subject to periodic review in order to ensure possible improvements in light of the needs of the Organization.

17. Some delegations emphasized the importance of receiving information from representatives of the Secretariat in order to facilitate the work of the Ad Hoc Committee. The view was expressed that, while the Committee, at the present session, should consider the outstanding legal aspects of the item, which included, inter alia, the question of ensuring effective remedies for non-staff personnel, legal assistance to staff and the question of the filing of applications by staff associations before the Dispute Tribunal, priority should be given to the first issue.

B. Scope ratione personae of the new system of administration of justice

18. While underlining the importance of providing effective remedies to all persons who perform work for the Organization, several delegations reiterated their support for the two-step approach, whereby the new system was first made available only to those individuals who had access to the previous system, while the situation of non-staff personnel would be considered at a later stage. The view was also expressed that the broadening of the scope of the new system at the present stage would cause various problems and that the chance should first be given for the new Tribunals to begin their work. However, it was noted that, while the first step would be implemented by 1 July 2009, it was already the time for delegations to consider how to proceed with the second step. It was therefore suggested that the Committee

should focus its work at the present session on the question of the remedies available to the different categories of non-staff personnel.

19. The view was expressed that, in addressing the issue of a possible expansion of the scope of the new system, the determining factor would be whether certain categories of personnel, who were not covered under the current system, lacked access to any adequate means of legal redress. However, the view was also expressed that a cautious approach should be taken in granting individual contractors access to the new system, in light of the particular nature of their relationship with the Organization. A proposal was also made regarding a possible approach to alternative remedies for personal service contractors. In this regard, it was stated that an analysis by the Secretariat of the feasibility of the proposed approach would be welcome. Moreover, it was observed that the work regarding the scope of the new system of administration of justice should remain consistent with the outcome of the reform of human resources within the United Nations.

20. Management evaluation was mentioned as a key component of the new system of administration of justice. It was recalled that, in paragraph 7 of its resolution 63/253, the General Assembly had decided that interns, type II gratis personnel and volunteers (other than United Nations Volunteers) would have the possibility of requesting an appropriate management evaluation but would not have access to the United Nations Dispute Tribunal or to the United Nations Appeals Tribunal. It was also suggested that a similar solution could be applied to other categories of non-staff personnel.

21. Some delegations expressed their wish to obtain more information from the Secretariat on the nature of the different contracts in use for non-staff personnel. It was also proposed that the Ad Hoc Committee recommend to the General Assembly that the Secretary-General be requested to submit a further report on the situation of non-staff personnel, for consideration by the General Assembly at its sixty-fifth session.

C. Other outstanding legal issues

22. Some delegations also referred to other outstanding legal issues. In particular, it was pointed out that further consideration should be given to the mandate of the Office of Staff Legal Assistance and to the establishment of a procedure for disciplinary measures to replace the Disciplinary Committees.

IV. Recommendation

23. At the 2nd meeting, on 24 April, the Ad Hoc Committee decided to recommend that ....

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Annex

Informal summary of the discussions in the Working Group of the Whole, prepared by the Chairman of the Working Group

A. General remarks

1. The Working Group agreed that the main issue to be considered at the present session of the Ad Hoc Committee was that of the scope *ratione personae* of the new system of administration of justice. Therefore, most of the work of the Working Group focused on that issue. However, some other legal issues were also addressed in the discussions, such as the questions of legal assistance to staff and whether staff associations may file applications before the United Nations Dispute Tribunal.

2. In the course of a question-and-answer session, representatives of the Secretariat answered questions from delegations on the following topics: the different categories of non-staff personnel and dispute settlement mechanisms available to them; management evaluation; legal assistance to staff; the selection of candidates made by the Internal Justice Council for the positions of judges at the United Nations Dispute Tribunal and the United Nations Appeals Tribunal; the status of the preparation for the implementation of the new system; disciplinary procedures; and the preparation of the rules of procedure of the two Tribunals.

B. Scope of the new system

3. Several delegations expressed the view that non-staff personnel should be provided with effective mechanisms for the settlement of their disputes with the

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Organization. The point was made that, in line with the original purpose of the reform, the mechanisms to be afforded to non-staff personnel should not be too diverse or complicated in order to avoid any discrimination or discouragement of their utilization.

4. Some delegations pointed to the need for receiving additional information from the Secretariat on the types and number of disputes involving non-staff personnel, the mechanisms currently available to them and the problems that had arisen in the implementation of such mechanisms.

5. Some delegations raised the question of whether non-staff personnel should, as proposed by the Secretary-General (A/62/782, para. 55), be granted access to the new informal system of administration of justice, and, if so, under what conditions and modalities such access should be granted. Other delegations were of the view that the informal system should play a greater role in the settlement of disputes between the Organization and its personnel, and that non-staff personnel should be encouraged to resort to that system. The point was made, however, that it was necessary for the Ad Hoc Committee to receive further information on how the new informal system would actually work, on its current resources and capabilities, and on the possible outcome of a procedure brought to it, in particular with regard to mediation.

6. Some delegations also referred to the need to provide non-staff personnel with adequate redress mechanisms in the event that recourse to the informal system would not produce a satisfactory outcome.

7. Some delegations were of the view that it was still necessary to obtain further information on the adequacy of the mechanisms that are currently available to the various categories of non-staff personnel, more specifically with regard to arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL). In view of the low number of cases that were settled by arbitration under UNCITRAL rules, the question was asked whether this type of arbitration was suitable for the needs of non-staff personnel, in particular in light of the costs that were involved.

8. Recalling the decision already made by the General Assembly, in paragraph 7 of its resolution 63/253, to grant interns, type II gratis personnel and volunteers (other than United Nations Volunteers) the possibility of requesting an appropriate management evaluation, a proposal was made to extend such a possibility to other categories of non-staff personnel.

9. Some delegations also recalled the possibility of granting non-staff personnel access to the Dispute Tribunal. It was suggested that expedited procedures could be provided for that purpose in the statute of the Dispute Tribunal.

10. According to another proposal, an alternative mechanism could be created for non-staff personnel performing work by way of their personal service for the United Nations. Such mechanism could comprise two steps. First, such personnel should be provided with a possibility of obtaining a managerial review of the contested decision. Thereafter, the possibility of recourse to arbitration pursuant to UNCITRAL rules would be maintained for claims exceeding $25,000, while an expedited and streamlined arbitration procedure would be established for claims of a lesser amount. It was proposed that, under such simplified procedure, cases would be decided by a single arbitrator with no possibility of appeal; moreover, a list of

regional or national arbitration associations, which would agree to assist in the settlement of such disputes and would work under the local arbitration rules, could be maintained. It was suggested that the Secretariat could be asked to study the feasibility of that proposal.

11. Reference was also made to the Secretary-General's proposal that non-staff personnel be provided with a separate formal, but less lengthy and complex dispute resolution procedure (see A/62/782, paras. 52-54). Such a mechanism could consist of an internal standing body with powers similar to those of the Dispute Tribunal, which would make binding decisions that are final and not subject to appeal. Some delegations were of the view that the Secretary-General should be requested to elaborate on this proposal and to provide further details thereon. However, the point was also made that the establishment of an independent standing body might not be appropriate at the present stage.

C. Other legal issues

12. The Working Group also considered the questions of legal assistance to staff and the filing of application by staff associations. With regard to the former issue, reference was made to paragraphs 9, 11, 15 and 16 of General Assembly resolution 63/253.